IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.804 OF 2004

IN

SUIT NO.2620 OF 1995

...

Shashikant G. Rane ...Plaintiff

v/s.

Sitaram D. Rane & ors. ...Defendants

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Mr.S.S.Shetty i/b M.P.Vashi & Associates for the Plaintiff.

Mr.A.K. Molly for Defendant No.1.

Mr.H.R. Desai for Defendant No.3.

...

CORAM: D.K.DESHMUKH, J.

DATED: 10TH DECEMBER,2004

P.C.:

1. This Notice of Motion is taken out by the original Defendant No.1 for setting aside exparte decree. The decree is passed by order dated 29-11-2003. The Plaintiff has filed affidavit of service stating that the summons of the Defendant No.1 was served on the advocate of the Defendants Nos. 1 & 2 Shri S.V. Shetty, Advocate. In the affidavit filed in support of the Notice of Motion, though it is claimed that the writ of summons was not served on the Plaintiff, it is nowhere stated that Mr.Shetty was not engaged by the Defendant No.1 to represent him in this suit. Therefore, there is no reason to believe that the exparte decree passed came to be passed against the Defendant No.1 without effecting valid service on him. Notice of motion, thus, has no substance. But I have to observe that in the beginning the learned Counsel appearing for the Defendant No.1 stated that Mr.Shetty, advocate was not engaged in this case. Therefore, I asked him to point out to me a statement to that effect in the affidavit filed in support of the motion. But he did not point out any such statement to me, though he

took long time in reading the entire affidavit more than once and thus has wasted the court's time. The Notice of Motion is, therefore, dismissed with an exemplary cost. Defendant No.1 is directed to pay Rs.10,000/- to the Plaintiff, as and by way of costs of this Notice of Motion.

At this stage request is made for stay of this order. Request is rejected.

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